IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15079 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAHDEVSINH LAYAKSINH TOMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15079 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No.3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Ahmedabad City, on 11th September, 2004, in exercise of

powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 15th August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into two types of materials in arriving at subjective satisfaction. Firstly, the fact of filing of three criminal cases against the petitioner under the Indian Penal Code and secondly two incamera statements of the witnesses recorded by the sponsoring authority on 8th September, 2004 and verified by the detaining authority on 9th September, 2004.

3. The first offence came to be registered against the petitioner before Gomtipur Police Station on 26th July, 2004 under Sections 452, 387, 506(2) and 114 of the Indian Penal Code as well as under Section 25(1)A of the Arms Act. As per the allegations, the petitioner extorted an amount using forced from the citizens and with weapons. The second crime came to be registered against the petitioner before Meghaninagar Police Station on 21st August, 2004 for the offence punishable under Section 25(1)A of the Arms Act and Section 135(1) of the Bombay Police Act, whereby the petitioner was found in possession of prohibited weapons. While third case came to be registered before Shaherkotada Police Station on 27th August, 2004 for the offence punishable under Section 384 of the Indian Penal Code wherein also the allegations against the petitioner was of extorting money by using force. The detaining authority took into consideration thoroughly and exhaustively the investigation papers in above said three cases and came to the conclusion that the petitioner was a habitual offender within the meaning of the PASA Act.

4. The detaining authority also relied upon the two incamera statements of the witnesses as aforesaid, out of them one witness referred to an incident occurred on 29th July, 2004. The witness was beaten by the petitioner on suspicion that the witness was providing information to the police in respect of the illegal activities of the petitioner. The incident attracted crowd but the same was disbursed because the petitioner rushed towards the crowd with revolver. There was chaos in the locality and the atmosphere of terror and fear was spread. The second witness referred to an incident occurred on 6th August, 2004, at about 5.00 P.M., the witness was present at his business place and the petitioner approached him and

demanded an amount of Rs.5,000-00 from the witness because, according to the petitioner, he had to pay an amount to his advocate. On refusal to give an amount by the witness, the witness was dragged in a public place in a street and was beaten by the petitioner. The witness raised shouts for help which attracted many persons but none dared to intervene. The petitioner took out knife and threatened the witness to kill, the witness was frightened. The petitioner rushed towards the crowd with open knife so the people started running helter-skelter, the traffic was disrupted in the locality, the atmosphere of fear was spread.

5. Relying on the above materials, the detaining authority came to the conclusion that the petitioner was engaged in the anti social activities of extorting money from the innocent citizens. The detaining authority concluded that the petitioner was dangerous person within the meaning of PASA Act and a habitual offender. The detaining authority came to the conclusion that the petitioner is headstrong and ferocious by temperament and keeps weapons like revolver always with him. The detaining authority came to the conclusion that the illegal activities of the petitioner were prejudicial to the maintenance of the public order. The detaining authority came to the conclusion that the activities of the petitioner were required to be prevented forthwith. After taking into consideration other remedial measures, which may be taken against the petitioner under the general law, the detaining authority came to the conclusion that there was no other alternative except to detain the petitioner under the PASA Act as dangerous person. The detaining authority, therefore, passed an order of detention of the petitioner, which is under challenged in this petition.

6. Learned advocate Mr.M.R.Prajapati, for the petitioner and learned AGP Mr.H.M.Prachchhak for the respondent No.1 were heard at length. Affidavit-in-reply as filed by the detaining authority and placed on record by the learned AGP, is taken into consideration.

7. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue whether the detaining authority applied mind properly to the materials placed before him.

8. The grounds of detention as placed on record clearly indicate that in all three cases filed against

the petitioner, he was in judicial custody. The detaining authority in this respect reached to the subjective satisfaction that the petitioner was likely to move a bail application before the competent Court in time and on so moving an application for bail by the petitioner, he was likely to be released on bail. The detaining authority also came to the conclusion that on so releasing the petitioner on bail, he was likely to continue his illegal activities prejudicial to the maintenance of public order.

9. The facts of the present case are squarely covered by the decision of the Apex Court in the matter of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 (1) S.C. 3675, wherein the Apex Court observed that there must be cogent materials before the officer passing the detention order that the detenu was likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail was not held to be a cogent material and the detention order based on such material was held liable to be quashed.

10. In the present case, in all three cases, the petitioner had not even moved any bail application to get him released on bail. Though the Apex Court observed that even the filing of the bail application by the detenu may not be a cogent material to infer that the detenu was likely to be released on bail. Learned advocate for the petitioner makes a statement that the petitioner has not preferred any bail application before any Court in respect of three cases filed against the petitioner and till today, the petitioner is in judicial custody in the said cases. Therefore, on going through the grounds of detention, served upon the petitioner and going through the papers, it clearly appears that there was no cogent material at all placed before the detaining authority firstly to infer that the petitioner was like to file an application for bail and secondly that on filing of such bail application, the petitioner was likely to be released on bail. Thus, the subjective satisfaction arrived at by the detaining authority that on releasing the petitioner on bail, he was likely to continue his illegal activities is based no material at all. The subjective satisfaction, therefore, arrived at by the detaining authority in this respect is not legal, valid and in accordance with law. The order under challenged, therefore, is required to be quashed and set aside on this ground alone.

11. In the result, the petition is allowed. The order passed by the Police Commissioner, Ahmedabad City on 11th September, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu Sahdevsinh Layaksinh Tomar is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

(vijay)